

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS
COMMERCE COMMISSION

JUL 1 1 37 PM '02

CHIEF CLERK'S OFFICE

ORIGINAL

RURAL ELECTRIC CONVENIENCE)
COOPERATIVE Co. and SOYLAND)
POWER COOPERATIVE, INC.)

Complainant)

vs.)

CENTRAL ILLINOIS PUBLIC SERVICE)
COMPANY (AMEREN CIPS))

Respondent)

AND)

FREEMAN UNITED COAL MINING)
COMPANY)

Intervenor)

vs.)

RURAL ELECTRIC CONVENIENCE)
COOPERATIVE Co. and SOYLAND)
POWER COOPERATIVE, INC.)

Counterrespondent)

DOCKET No. 01-0675

RESPONSE OF FREEMAN UNITED COAL MINING COMPANY
TO THE PETITION FOR INTERLOCUTORY REVIEW
OF SOYLAND POWER COOPERATIVE, INC.

NOW COMES Freeman United Coal Mining Company ("Freeman"), by its attorney, Gary L. Smith, of Loewenstein, Hagen & Smith, P.C., and hereby submits the following response to Soyland Power Cooperative, Inc.'s ("Soyland's") Petition for Interlocutory Review of the Administrative Law Judge's ruling on May 28, 2002, dismissing Soyland as a co-complainant.

The Complaint in the instant case was filed by Rural Electric Convenience Cooperative Co. ("RECC") and Soyland pursuant to the Electric Supplier Act (220 ILCS 30/1, et seq., (hereinafter "ESA")). While RECC claims the right to serve Freeman and claims Freeman as a customer pursuant to a Service Area Agreement, Soyland makes no such claim in any of its Counts VII through XI. Soyland notes that this case is one of first impression. Soyland is correct. No one has interpreted Section 6 of the ESA in the unusual fashion that Soyland has.

Soyland makes a statutory claim as a third-party beneficiary under Section 6 of the ESA in count VII; under Sections 5 and 6 of the ESA in Count VIII; under Sections 6 and 8 of the ESA in Count IX; again Section 6 of the ESA in Count X under a Service Area Agreement to which it is not a party, and finally under Section 6 of the ESA in Count XI under Section 2 of a Service Area Agreement to which it is not a party. A casual glance at the statutory language of Sections, 5, 6, 7, and 8 leads to the clear conclusion that Soyland has no standing as a party complainant and the ALJ's decision dismissing Soyland is correct.

The Commission is a creature of statute and possesses only the powers authorized by the legislature, and any acts beyond the purview of the Statute are void. *E.g., Illinois Bell Telephone Co. v. Ill.C.C.*, 203 Ill.App.^{3d} 424 (1990). Under the ESA the Commission is given the authority to hear and determine complaints of electric suppliers to serve customers. Section 2 of the Act sets forth the legislative declaration concerning disputes between electric suppliers involving electric service to the public and the resolution of those disputes involving the areas in which each

supplier is to provide service. Soyland is not providing any service to the public in any area and, in this most basic sense, the Commission does not have jurisdiction to hear and resolve Soyland's claims in Counts VII through XI. (*Illinois Consolidated Tel. Co. v. Ill.Com.Com.*, 95 Ill.App.^{2d} 142 (1983); *Illinois-Indiana Cable TV Assn. v. Ill.Com.Com.*, 55 Ill.^{2d} (1973). Soyland's "customer" is RECC and there is no dispute or claim in the complaint involving Soyland's right to supply electricity to RECC. Therefore, Soyland's claims must fail.

Soyland claims that it is an electric cooperative and an electric supplier under the definitions of the ESA. It then leaps to the conclusion that its "business model" somehow gives it standing as a complainant under the ESA. Soyland, however, quotes Section 7 of the Act and the language indicating that an electric supplier which claims it should be permitted to serve any customer or premises may file its complaint with the Commission. Soyland still does not claim to have the right to serve Freeman or the premises and therefore it may not file a complaint with this Commission. The plain language of the Act excludes Soyland's complaint and its "business model" does not amend the requirements of the ESA. Furthermore, the language in Section 5 of the Act pertains to electric suppliers serving customers at locations which it is serving on the effective day of the Act and Section 6 allows electric suppliers to contract among themselves for service areas. Section 8 does not give any third party standing to Soyland to bring this claim. Soyland's complaint is beyond the Commission's power. Soyland does not present anything in its Petition for Interlocutory Review to give it standing to bring a claim under the Electric

Supplier Act. Therefore, the Commission should deny Soyland's Petition for Interlocutory Review.

Respectfully submitted,

FREEMAN UNITED COAL MINING COMPANY

By:


Gary L. Smith

Gary L. Smith-#2644029
Loewenstein, Hagen, & Smith, P.C.
1204 South Fourth Street
Springfield, IL 62703
Phone: 217/789-0500
Fax: 217/522-6047

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon of all parties to the above cause by enclosing the same in an envelope addressed to such party at their address as follows:

Donald Woods
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Mr. Greg Rockrohr
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Jerry Tice
Grosboll, Becker, Tice & Reif
101 East Douglas
Petersburg, IL 62675

Michael W. Hastings
Atty. for Soyland Power Cooperative,
Inc.
Post Office Box 3787
Springfield, IL 62708-3787

Scott C. Helmholtz
Sorling, Northrup, Hanna,
Cullen and Cochran, Ltd.
Post Office Box 5131
Springfield, IL 62705

SPI Energy Group
2621 Montega Drive
Springfield, IL 62704

Michael R. Caldwell
Freeman United Coal Mining
Post Office Box 4630
Springfield, IL 62708

with postage fully prepaid, and by depositing said envelope in a U.S. Post Office

Mail Box in Springfield, Illinois on this 28 day of June, 2002.



Gary L. Smith